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ABSTRACT

This curriculum guide presents a context for preservice education and/or professional development in education law for teachers. Section 1, "Teacher Liability," discusses "Duty to Supervise," "Providing Reasonable Care," "Duty," "Preventing Student-to-Student Sexual Harassment," "Reporting Child Abuse," "Issuing Permission Slips," "Defense for Liability," "Acting as a Reasonable Person," "Contributory Liability," "Strict Liability," and "Availability of Liability Insurance." Section 2, "Student Rights," focuses on "Freedom of Expression," "Pledge of Allegiance," "Prayer," "Fighting Words," "Student Searches," "Constitutional Due Process," "Family Education Rights to Privacy Act (FERPA)," and "Students with Disabilities: The Right to Appropriate Education." Section 3, "Teacher Rights," discusses "Freedom of Expression (Personal Views)" and "Religious and Political Association." Section 4, "Academic Freedom," includes "Obligation to School District/State Curriculum" and "Use of Supplementary Materials." Section 5, "Teacher Conduct," includes "Language;" "Harassment;" "Corporal Punishment;" "Fair Labor Standards, Hiring, and Promotion Policy;" "Medical Policy;" "Dress and Grooming;" "Lifestyle Choices;" "Students with AIDS;" "Academic Sanctions;" "Sexual Misconduct with Students;" "Marriage and Pregnancy;" and "Extracurricular Participation." Section 6, "Teacher Termination," includes "Probationary Teachers" and "Teachers with Tenure." Three appendixes include recommended resources, Lexis-Nexis Academic Universe, and sexual harassment policy in the Lincoln Parish schools. (Contains 9 references.) (SM)

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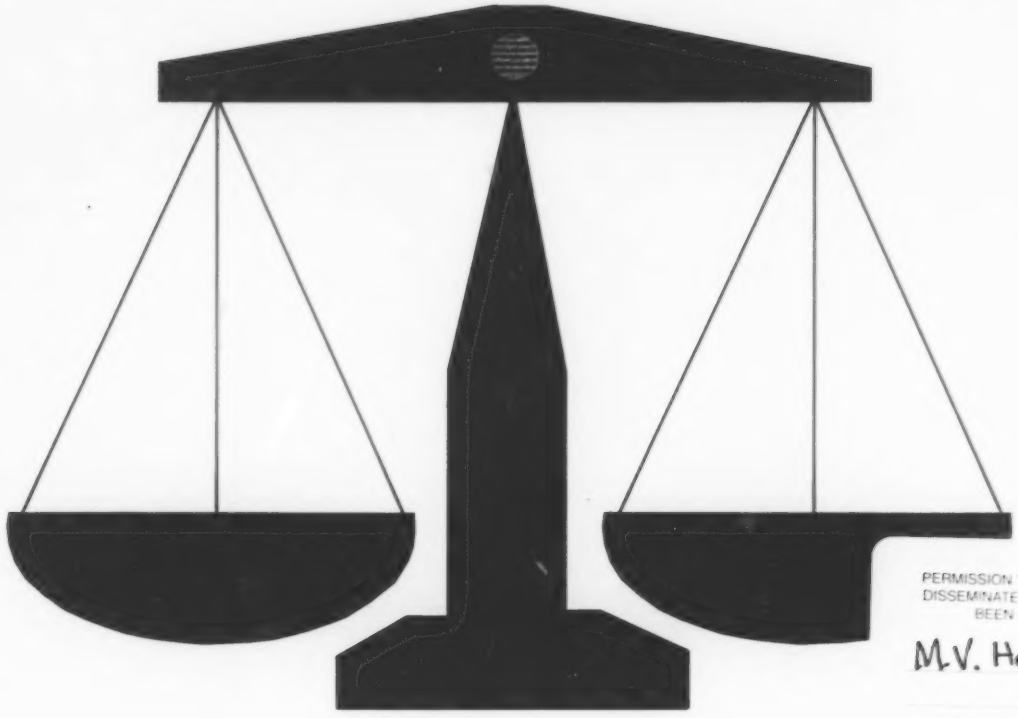

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# PREVENTIVE LAW CURRICULUM GUIDE

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**Designed for**

**Preservice and Inservice Teacher Education Training Programs In Louisiana Colleges and Universities**

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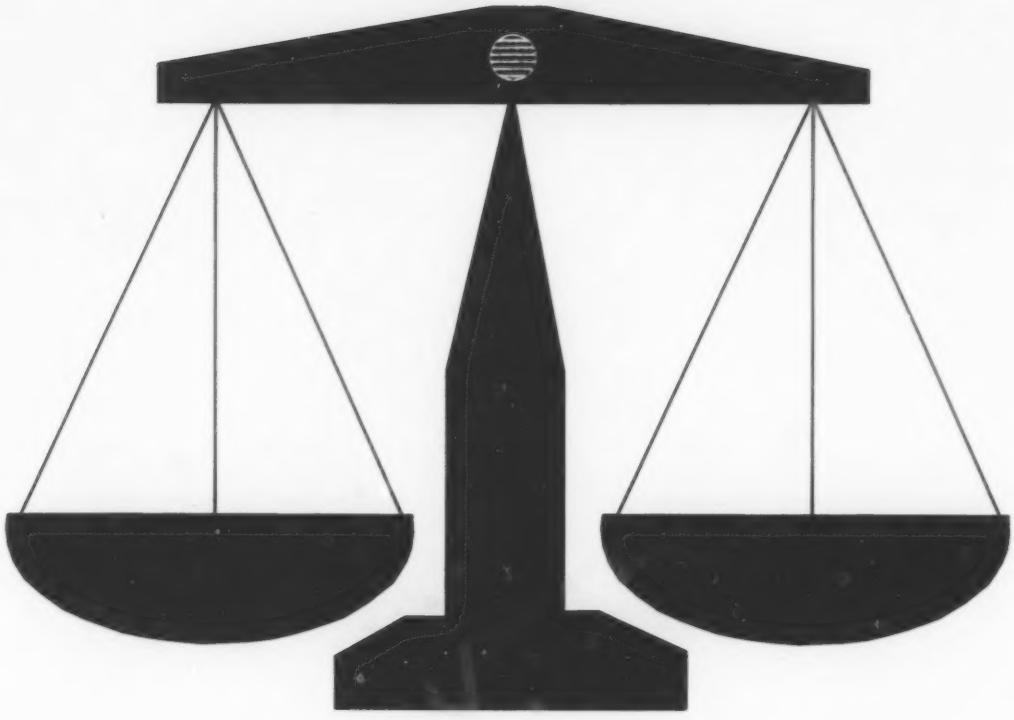

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## INTRODUCTION

The **Preventive Law Curriculum Guide** provides a context for preservice education and/or professional development in education law for teachers. This guide was developed in response to information from a survey of Louisiana educators. A majority of those responding stated that they had received little training in educational law before being hired as a teacher (Gullatt & Tollett, 1997a). In addition, they perceived a lack of knowledge relative to education and the law and this was producing stress and anxiety. Topics suggested in the responses to the survey are included in this guide (Gullatt & Tollett, 1997b).

In addition, print and web-based resources are identified to assist educators searching for relevant and timely information. Strategies for utilizing the Louisiana Online University Information System (LOUIS) database, Lexis-Nexis, are also appended. This database is accessible from any Louisiana academic library.

The guide was developed as part of an LEQSF-funded grant proposal, 1998-99. This document has been submitted to the ERIC database and distributed to each Louisiana college/university. The guide can be accessed from the Northwestern State University College of Education homepage (http://www.NSULA.edu).

Special thanks go to Vicki Wheelis and Carolyn Wiggins for typing the original guide manuscript and to the 1999 summer quarter class (EDUC 556) at Louisiana Tech University for their contributions to portions of the text material. This guide is dedicated to the hard working and professional public school teachers in Louisiana.

# PREVENTIVE LAW CURRICULUM GUIDE

# TEACHER LIABILITY

## Duty to Supervise

Providing adequate supervision is determined by terms of the required standard of care. The presence of a hazard creates a heightened standard of care. The court has determined that the "standard of care" based on a teacher's relationship to students under his care and custody differs from that generally existing between a public employee and a member of the general public. In a limited sense the teacher stands "in the parents' place," and has a portion of the powers of the parent over the pupil as is necessary to carry out employment, owing the student the duty of supervision. The degree of supervision depends upon the maturity of the student, the number of students involved, the nature of the activity, and the potential for injury. Teachers are required to provide reasonable supervision for all students under their charge.

## Providing Reasonable Care

If a rule can be developed from teacher liability cases, it is this: A teacher's absence from the classroom, or failure to properly supervise students' activities, is not likely to give rise to a cause of action for injury to a student, unless under all the circumstances the possibility of injury is reasonably foreseeable. This rule does not imply that teachers are to take duty and supervisory responsibilities lightly. It means that forseeability is a major factor in determining liability. Here are some questions to help with the reader's decision making process concerning this concept: Would it seem likely that middle school students would be involved in "horseplay" if the teacher is not in

the classroom? Is it important for the science teacher to be in attendance in the science lab while experiments are conducted? Should an elementary teacher walk children to and from a playground distant from the classroom and near other facilities such as a shop, gym, or cafeteria? In these situations a teacher should foresee the potential for injury. In essence, reasonable care entails an analysis of whether someone should be present with students to help ensure safety or whether students may be safely left alone. Teachers should couple the duty of reasonable care with the concept of forseeability to provide safe learning environments.

## Duty

According to *Nester v. City of New York*, supra, 28 Misc.2d 70; 211 So 2d 975, 977 (1961), "There is no requirement that the teacher have under constant and unremitting scrutiny the precise spots wherein every phase of play activity is being pursued; nor is there compulsion that the general supervision be continuous and direct." However, the courts do require the "average" teacher to make a "good faith" effort to provide for the safety of all children under watch care. Thus, if the "average" educator could foresee a danger, then negligence may ensue if an injury occurs due to a lack of supervision. The ratio of teachers to students for "reasonable care" for supervision is dictated case by case. If student management problems have occurred in the past or there is anticipation of a problem in the future, then the teacher to student ratio should reflect this knowledge.

## Preventing Student-to-Student Sexual Harassment

Title IX of the Education Amendment of 1972 and Title VII of the 1964 Civil Rights Act are the two major federal statutes used to deter sexual harassment in education programs. Sexual harassment is "the unwanted imposition of sexual requirements in the context of a relationship of unequal power." While originally addressing teacher-to-student harassment, the definition has been broadened to include peer-to-peer sexual harassment. In cases related to the latter, plaintiffs claimed the school was liable for damages if proof existed of a "hostile environment." Given the context of this litigation, school districts are obligated to take reasonable steps to prevent student-to-student sexual harassment. At issue here is "what is reasonable?" Courts prefer documentation of steps taken by teachers and administrators in an effort to stop harassment. (See Appendix C for sexual harassment information from the Lincoln Parish School System, Ruston, LA.) Attempts to end peer harassment include such actions as: referring students to the school administration, holding conferences with students and parents, imposing detention for those involved, implementing other forms of punishment, and counseling. According to the courts it is imperative that action be taken quickly. Teachers and administrators should always document in writing the steps taken to stop student-to-student harassment. These notes may prove helpful if suits are filed in the future.

## Reporting Child Abuse

According to the Model Act, a component of the 1974 Child Abuse and Treatment Act, child abuse and neglect are defined as "the physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of eighteen by a person who is responsible for the child's welfare." Currently, 49 states have mandated that teachers report to certain authorities suspected instances of child abuse and neglect. All 50 states have enacted legislation granting immunity from criminal and civil liability to reporters of child abuse and neglect if the report "is made in good faith." Most states have enacted criminal penalties for those persons guilty of not reporting suspected cases of child abuse and neglect. While most states classify the offense as a misdemeanor, punishments normally include fines up to $1,000 and jail sentences for up to one year, or both. Teachers and school administrators are included in the group of childcare providers mandated to report suspected child abuse. Teachers are encouraged to report suspected abuse to the school administration; however, if the teacher suspects that the administration has not reported the incident to the proper authorities, the teacher may contact local authorities directly. Suspected child abuse should be reported in a timely manner, and written documentation of reports should be maintained.

## Issuing Permission Slips

A school district owes a duty to its students to employ "ordinary care" and to anticipate reasonably foreseeable dangers so as to take precautions for protecting the children in its custody from dangers occurring on field trips. According to *Adams v.*

*Roark*, 686 S.W. 2d 73 (Tenn. 1985), exculpatory clauses purporting to contract away liability for intentional conduct, recklessness, or gross negligence are unenforceable. Thus, teachers need to require parental permission to take students off the campus for field trips; however, permission slips should not state that the parents may not sue anyone as a result of injury. An injury during a field trip does not necessarily mean negligence on the part of the teacher if the injury was the result of an unforeseen circumstance. Additional chaperones help reduce the possibility of injury or accident by providing extra supervision. All chaperones should receive preparation training regarding their duties while on the field trip and be held accountable for carrying out these duties.

## Defense for Liability

In all cases involving negligence, the defendant may attempt to show that the injury was an accident, that his or her act was not the proximate (legal) cause of the injury, or that some other intervening act was responsible for the injury. Other rejoinders against negligence which are classified as defenses are (1) contributory negligence, (2) comparative negligence, (3) assumption of risk, and (4) immunity.

## Acting as a Reasonable Person

A reasonable person is an ideal, a model of conduct, and a community standard. Although the model varies from case to case, the general characteristics are (1) the physical attributes of the defendant, (2) normal intelligence, (3) normal perception and memory with a minimum level of information and experience common to the community, and (4) such superior skill and knowledge as the person actor has or holds out to the

public as having. If acknowledged as a teacher or administrator, a person then accepts the responsibility of knowing how to provide for the safety of the children under care. Educators are required to demonstrate "reasonable" efforts, since they are considered by the community as professionally trained to watch after children.

## Contributory Liability

Contributory negligence involves some fault or breach of duty or failure to exercise the necessary standard of care on the part of the injured person. Children between one and seven years of age generally cannot be liable for negligence. Children between seven and fourteen years of age are presumed to not be capable of negligence until proved to the contrary. Those beyond 14 years of age are required to accept most liability for their actions. Therefore, the younger the child, the more supervision is needed. Further, it is recommended that additional teachers be used during special activities such as field trips.

## Strict Liability

Strict liability is often referred to as liability without fault. Strict liability means liability that is imposed on an actor apart from either (1) an intent to interfere with a legally protected interest without legal justification for doing so or (2) a breach of duty to exercise reasonable care. This type of liability arises as a result of the abnormal danger of the activity and the risk created for those in the vicinity. While these cases are rare, possibilities of actions involving strict liability include laboratory experiments, shop activities, and field trips.

Due to strict liability, any teachers supervising labs, shops, and similar activities

should be aware that it their responsibility to establish safety rules and to communicate these rules to students before they are allowed to participate. A safety test should be given so that information about student knowledge of safety issues is documented. Reviews of specific rules and safety measures should be conducted on a regular basis.

## Availability of Liability Insurance

Many states have waived immunity, by statute or by case law, if the school district has purchased liability insurance. Immunity remains in effect in some states if the school district does not purchase insurance. The court does assume, however, that where insurance is involved, the school district will attempt an administrative settlement before resorting to the courts. Local school districts in Louisiana provide legal and judgmental protection for employees who are sued while acting in the performance of their duties. All educators, however, should consider obtaining additional liability insurance through professional associations to help protect against large court awards for suffering and/or injury attributed to negligence.

# STUDENT RIGHTS

## Freedom of Expression

While the First Amendment guarantees freedom of speech and expression, the Supreme Court has relied primarily on two tests to determine whether the state can control freedom of speech or expression: (a) clear and present danger and (b) material and substantial disruption. Judicial authority has, in the past, supported the proposition that a board of education has the authority to regulate pupil dress and personal appearance if they become so extreme as to interfere with a school's favorable learning

atmosphere.

In regard to student speech, school officials may suppress vulgar, lewd, obscene, and plainly offensive speech, even when it is expressed outside the context of an official school program or event. Students do have a constitutional right of freedom of political expression, speech, and press that cannot be encroached upon by the school unless the exercise of this right "materially and substantially" disrupts the school or is such that there can be a "reasonable forecast of material and substantial disruption."

## Pledge of Allegiance

The state cannot compel a student to recite the Pledge of Allegiance. In addition, the school cannot require students to leave the classroom or stand in silence. In *Goetz v. Ansell,* 477F.2d 636 (2d Cir. 1973) these actions were defined as benign punishment for nonparticipation or compelling an act of acceptance to the pledge over a student's deeply held contrary convictions.

## Prayer

Because of the doctrine of separation of church and state, religious exercises in public schools are considered unconstitutional. A period of silence for meditation or voluntary prayer in the public schools was declared unconstitutional in 1985 by the United States Supreme Court in *Wallace v. Jaffree* (105 S. Ct. 2479). Student-initiated prayer was determined to be unconstitutional in 1996 in *Ingbretsen v. Jackson Public School District* and *Harris v. Joint School District No. 241 117S. Ct. 388).* The state legislature in Louisiana has recently crafted a statute (1999) allowing for school prayer. If the statute is not challenged and overruled, Louisiana will be unique in its acceptance

of school prayer in public schools. At this printing, no legal challenges have been made to the law.

## Fighting Words

Some words have such a significant meaning that when spoken to others incite passion, anger, and insult to the level that a "reasonable person or student" would want to take physical action in response to the statement. These words may have racial overtones, contain family slurs, or degrade and insult a person. Teachers are expected to prohibit the use of words that would encourage or incite violent behavior, discipline problems, or disruption. Discipline problems may be reduced by quick intervention by the teacher when student language appears to approach the "fighting word" vocabulary. Skillful supervision by all teachers will assist in preventing the use of such language in the school setting.

## Student Searches

The Fourth Amendment of the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause..." The Fourth Amendment has five important components: (1) protection of the *right* of people "to be secure in their persons, houses, papers, and effects," (2) protection from *unreasonable* searches and seizures, (3) necessity of government showing *probable cause* for the search, (4) necessity that the search be *specific* as to place to be searched and articles to be seized, and (5) requirement that a *judge* or *magistrate* be interposed between the individual and the government.

Three of the above five components can easily relate to student searches in public schools. Students have a right of privacy to be secure in their persons, papers, and effects, and this right protects them against unreasonable searches and seizures. In addition, searches must be specific as to what is being sought and the location in which it is secreted. Courts do not require that schools provide evidence constituting probable cause or obtain a warrant from a judge authorizing a search. Schools need only have "reasonable suspicion," a standard lower than that of "probable cause." Facts leading to the initiation of the search must, however, be reasonable, as determined by the context in which the search takes place. Although courts consider strip searches as intrusive, school officials can conduct strip searches of students if they have reasonable suspicion that the student is in possession of illegal contraband or is secreting something that could be harmful to other students.

Teachers are advised to contact the school administration for a decision about searches and, if at all possible, to avoid such activities. In the event that a search is needed, the gravity of the offense and the possibility that weapons or drugs are involved need to be considered. Searches should be conducted in a secure spot with a witness and always with males and females separated.

## Constitutional Due Process

Due process may be either *procedural* or *substantive*. Procedural due process means that if a person is to be deprived of his life, liberty, or property, a prescribed constitutional procedure must be followed. The Supreme Court of the United States has ruled that three basic factors must be present: The person must have proper notice that

he is about to be deprived of his life, liberty, or property; the person must be given an opportunity to be heard; and the hearing must be conducted fairly.

To satisfy the constitutional requirement of substantive due process, the state must have a valid objective and the means used must be reasonably calculated to achieve the objective. In *Meyer v. Nebraska* (43 S. Ct. 625) the court related substantive protection of the due process clause of the Fourteenth Amendment to education when it held unconstitutional a Nebraska statute forbidding the teaching in public or private school of foreign languages to pupils below the eighth grade. Since the United States Constitution provided no express relief for offending the statute, the Court extended the due process clause to protect the teacher. The Court related the teacher's right to teach to an expanded substantive interpretation of "liberty."

## Family Education Rights to Privacy Act (FERPA)

Under FERPA, each school district is required to publish a pupil records policy that includes annual notification to parents and to students over 18 years of age. These policies must adhere to certain requirements of the act, including:

1. Records of individual students, containing "personally identifiable information," must be kept confidential and cannot be released by the school without written consent of the parent, or consent from the student if the student is over the age of 18.

2. Parents and guardians of students under age 18, and those students over 18, have the right to inspect all school records concerning that student.

3. The school district record-keeping system must be described in sufficient detail for parents to locate their child's records.

4. School district staff members with access to student records must be identified by title.

5. Each child's file must include a record of access, which must be signed by each staff member whenever they withdraw that student's file.

6. Parents have a right to appeal anything in a student's file that is considered incorrect, and if the school is not willing to delete the challenged material, the parents may request a hearing and/or provide a written statement to be attached to the challenged material.

7. The school policy must define what constitutes "directory information," and under that circumstances that information may be released without parental consent.

8. Treatment records "made or maintained by a physician, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity" and used in the treatment of an eligible student, that is, a student over 18 years of age or any student in an institution of post-secondary education, are excluded from the definition of "education records" in FERPA and are not automatically accessible to the student.

An exception to FERPA is recognized for disclosures that were required by state statutes before enactment of the act. Further, "personal notes" that are defined as "not education records" are exempted from parental access. Personal notes, which are not accessible to other school staff members, are exempted from student or parental access.

## Students with Disabilities: The Right to Appropriate Education

To ensure handicapped children basic educational rights, Public Law 94-142 incorporated certain tenets: (a) a free appropriate public education, (b) an individualized education program, (c) special education services, (d) related services, (e) due process procedures, and (f) the least restrictive environment (LRE) in which to learn. The term "free appropriate education" means special education and related services which have been provided at public expense, under public supervision and direction, and without

charge, meet the standards of the state education agency, and include an appropriate preschool, elementary, or secondary education in the state involved.

## TEACHER RIGHTS

### Freedom of Expression (Personal Views)

In *Pickering v. Board of Education* (88 S. Ct. 1731), the United States Supreme Court held that freedom of speech, while not absolute in all circumstances, is nevertheless sufficiently strong to require that the state show a "compelling state interest" in order to overcome a teacher's right to speak out on issues of public importance. After *Pickering* the courts developed a flexible rule that provides for balancing the public's interests against the private interest of the employee in each circumstance. However, this does not remove all state restraint on teacher activities. The courts have reflected a strong belief that because of their sensitive position in the classroom, teachers must be held accountable for certain activities both internal and external to the school. The interest of the public is to a great extent dependent on a teacher's status, appearance, and stature in the community. The school board must preserve the integrity of the learning processes of the school. Yet, because a teacher enters the school setting with constitutional freedoms of speech and association, the school must have a compelling reason to overcome the teacher's interest.

### Religious and Political Association

Group statements and association are protected forms of expression. All forms of association, political, labor-related, familial, or social, are governed by the First Amendment. Examples of associational rights relate to teacher expression through

teacher unions, teacher political associations, and issues of prohibited conflicts of interest. Associational rights are limited by overriding school interests in circumstances where associational activity would defeat school functions, e.g., where such activity takes a teacher away from assigned teaching duties.

## ACADEMIC FREEDOM

### Obligation to School District/State Curriculum

Because public school teachers work for the government, they are expected to teach from specified curricula and to present controversial issues in such a way that each student can make informed and individualized decisions concerning what conclusions should be drawn. A teacher is usually limited to teaching in certain specified areas of expertise based on academic preparation, which is generally evidenced by certification or endorsement status in a given field or specialty area. Although state and/or local boards of education adopt general policies and guidelines for curricula, teachers have an independent interest in selecting instructional methodologies to provide students with access to ideas and knowledge. A teacher is generally given some degree of discretion in using teaching strategies which suit student needs and abilities, the school district's curricula and course content, and an individual's teaching style.

### Supplementary Materials – Internet Sources/ Video Tapes/Copyright

When deciding on the use of certain instructional materials in the classroom, common sense and good judgment must prevail. The lack of an official policy does not relieve the teacher of a general obligation to screen the content of materials prior to using them with students. With the use of supplementary materials, it is necessary for

the teacher to consider the age of the students and the relationship of the material to the curriculum. If any questions exist about the use of supplementary materials and videos, teachers should consult with the school administration. Many school districts do have policies governing supplemental materials use.

A copyrighted work is the property of the author, who may assign it in exchange for a royalty on copies which are sold. The copyright law has expanded from denying only the copying of excerpts from books, periodicals, other print materials and printed music to include audio recordings, off-air videotape recordings and, more recently computer software.

Fair use allows copying of a limited amount of material without permission from, or payment to, the copyright owner, where the use is reasonable and not harmful to the rights of the owner, especially the owner's income. Copying for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, may not be an infringement of copyright if other factors are considered. Only one copy per student of a copyrighted work is allowed for a single printing. Copied work must meet three standards: (a) brevity (250 words/2 pages or less), (b) spontaneity (instance and inspiration at the time of discovery), and (c) cumulative effect (only one copy of a poem etc. from a book or work). In addition, taped television, cable, or satellite programs should be erased after 45 days after the recording date unless permission was given or obtained for longer classroom use. As a rule of thumb, copying an item repeatedly for continued use to avoid purchasing the entire book, magazine, tape, etc. is a copyright violation. All authors are entitled to their

fair royalty on original works. The copyright law protects this right and rewards the original creativity of the artist.

## TEACHER CONDUCT

### Language

In 1986, the Fifth Circuit Court of Appeals held that a college instructor's use of profanity for the ostensible purpose of motivating students did not constitute protected speech and justified termination. If this is the applicable standard at the college level, then surely the same or even a stricter standard would apply at the elementary and secondary levels.

### Harassment

The guidelines adopted to supplement Title VII define sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature." Harassment exists if this type of conduct "has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or defensive working environment." Sexual harassment cases usually fall into one or both of two categories: *quid pro quo* harassment (in which there is a tradeoff between sexual advances and employment conditions) and *non quid pro quo* "hostile environment" harassment (in which unwelcome comments, sexual advances or other verbal or physical conduct create an offensive working environment). In addition to federal restrictions on sexually harassing conduct, several states have corresponding legislation, which criminalizes such behavior under state law.

## Corporal Punishment

Corporal punishment is a highly controversial topic in the United States today. Perhaps no other legal issue in education has drawn as much criticism as the use of physical punishment in public schools. Those who support corporal punishment contend that it will cause changes in student behavior, teaching students self-discipline and respect for authority. Those who oppose corporal punishment view it as a legalized form of child abuse, which conveys to students that violence is an acceptable method of resolving problems or disagreements. Regardless of the views supporting or opposing corporal punishment, in states where not prohibited by state constitution, courts still view corporal punishment as an acceptable form of discipline when administered in a reasonable manner. While corporal punishment is still considered an acceptable form of discipline by the courts, school personnel increasingly are facing charges of assault and battery, prosecution, and even termination of employment for abusive acts against students.

Corporal punishment is not common throughout all school systems in the United States. Twenty-four states currently allow corporal punishment as a means of discipline. Interestingly, the courts, under the concept of *in loco parentis*, have sanctioned reasonable corporal punishment by school personnel, but no laws except those in one state protect school personnel who administer it. It is important for teachers to adhere to both district and school policies on corporal punishment.

## Fair Labor Standards, Hiring, and Promotion Policy

The Fair Labor Standards Act of 1938 was amended in 1963 to include what is commonly referred to as the Equal Pay Act. This act was designed to eliminate discrimination regarding pay or wages based on sex, where equal work, equal skills, and equal effort are performed under the same working conditions. This act specifies that differential pay is based on a seniority system, merit system, situation in which quantity and quality of production is a factor, and situations in which pay differences are based on any factor other than sex.

The Equal Pay Act was incorporated into Title VII of the Civil Rights Act of 1964. With almost identical language, Title VII covers not only sex, but also race, color, religion, and national origin.

## Medical Policy

District employees may be required to participate in initial and periodic physical and medical examinations to assure their job fitness. Those employees posing a danger to the well being of the school population may be suspended or dismissed by the board. Courts tend to defer to administrative discretion in such matters; however, they will overturn arbitrary decisions, such as dismissal for disability on the basis of questionable medical opinion.

## Dress and Grooming

Historically, constraints on teacher dress and grooming have often been challenged. While teachers view such restrictions as impairing their constitutionally protected rights to liberty, privacy, and freedom of expression, schools boards view

these restraints as necessary to create a professional image for teachers and to set a suitable tone for students. This issue is quite complex because numerous factors are involved in teacher appearance rulings. Courts must attempt to balance the factors which include health, safety, decorum, community values, and expectations with the teachers' right to be free from unreasonable restrictions concerning their appearance. Although courts continue to be divided on this issue, the present trend of decision is that reasonable teacher dress and grooming restrictions are accepted as a rational means for encouraging respect for authority, traditional values, hygiene, and classroom discipline. Because each school district varies in its regulation of teacher appearance, many school districts have implemented dress codes that specify in detail the dress and grooming deemed appropriate for teachers at school.

## Lifestyle Choices

A teacher's right to a personal lifestyle choice is balanced with the school board's interest in safeguarding the welfare of students. When exercising lifestyle choices, teachers must recognize the nature of their positions as role models for children. Constitutional claims regarding unconventional living arrangements, pregnancies out of wedlock, and other sexual improprieties are usually decided on a case-by-case basis. Decisions vary so there is no clear distinction between protected and unprotected lifestyle choices. Courts have been reluctant to uphold dismissals based on lifestyle choices resulting in no impairment to a teacher's performance or fitness to teach; but, courts will not support teacher conduct that has an adverse impact on one's classroom effectiveness. Therefore, restrictions can be placed on unconventional behavior that is

considered detrimental to job performance or harmful to students. It is also probable that courts will support actions taken by the school board when private conduct becomes highly publicized to the extent that it impairs the teacher's ability to teach.

Even though teachers do enjoy privacy rights related to lifestyle choices, these privacy rights are not absolute. Teachers should refrain from discussing their private lives in the classroom. A teacher's private life remain private.

## Students with AIDS

Attendance of students with acquired immune deficiency syndrome (AIDS) has been the focus of considerable controversy. Many states have adopted policies based on the guidelines issued by the National Centers of Disease Control. Generally, these policies allow students with AIDS to attend public schools upon certification by health officials that they pose a minimum danger of infecting others. Teachers should know the school district's policy and specified guidelines, especially as related to student rights and the importance of confidentiality. AIDS-infected students are protected by federal statutes barring discrimination against individuals with disabilities. Schools and school personnel may be liable for improper treatment of these students. Those who pose a health risk, such as exhibiting open lesions or engaging in dangerous behavior such as biting may require a more restrictive school environment as determined by appropriate health, medical, and school personnel.

## Academic Sanctions

Although school district policies generally permit teachers to deny credit for work missed while a student is suspended from school, controversy can occur when teachers

lower grades solely for disciplinary reasons. Recent court rulings reflect the opinion that reducing grades for misconduct, truancy, and other disciplinary measures results in a misrepresentation of the student's academic performance. Even when regulations permitting these academic sanctions exist, they should be reasonable and serve a legitimate school purpose. However, the use of academic sanctions for nonacademic reasons remains prevalent, and challenges to the practice continue. Teachers should note that the courts expect grades to accurately reflect a student's academic performance, and the use of academic sanctions for discipline purposes is not recommended.

## Sexual Misconduct with Students

Courts are united in the view that sexual improprieties between a teacher and a student will not be tolerated. Courts uphold school districts in teacher dismissal when evidence is produced that a teacher has engaged in sexual misconduct with a student. Sexual conduct which includes sexual language or sexual advances made by a teacher to a student is considered immoral or unprofessional behavior and grounds for dismissal. The teacher has the responsibility for setting the boundaries for teacher-student behavior. The law is quite clear on this issue. Teachers, as well as all school personnel, should avoid any sexual improprieties with students.

## Marriage and Pregnancy

Dramatic changes have occurred since the 1960s in the legal principles governing the rights of married or pregnant students. Married students are considered emancipated: free from parental authority, responsible for decisions, and not subject to

compulsory attendance laws. Title IX expressly prohibits recipients receiving federal funds from applying any rules resulting in discrimination based on a student's actual or potential parental, family, or marital status. Since pregnant or married students are afforded the same rights as regular students, without compelling evidence of disruption, school interference, or negative influence, their attendance may not be restricted. If separate programs for pregnant students are available, they must be comparable to the offerings for nonpregnant students and attendance must be voluntary. A determination of when the student should withdraw from school and receive homebound instruction can be made by the student's physician.

## Extracurricular Participation

Extracurricular participation has generated a great deal of litigation. In the 1970s, courts generally held that the property right to attend school encompassed participation in extracurricular activities. In contrast, the prevailing view holds that conditions not attached to school attendance may be attached to extracurricular participation. It is not unconstitutional for schools to pose academic standards, reasonable health requirements, residency stipulations, skill criteria, training regulations, and attendance requirements. The legality of charging of fees for extracurricular participation depends on the judicial interpretation of the state's constitutional and statutory provisions. Teacher-sponsors should be familiar with school policies on extracurricular activities. Courts expect these policies to be clearly stated, reasonable, distributed to parents and students, and applied without discrimination.

# TEACHER TERMINATION

## Probationary Teachers

A distinction exists between non-renewal and dismissal of a probationary teacher. During a probationary period, a teacher is typically employed on a one-year contract. If the probationary teacher is released during this period, this constitutes dismissal and the teacher is afforded due process. If the probationary teacher completes the one-year contract, the school board can elect to not renew the contract for any or no reason, unless constitutionally impermissible. Often, these reasons do not have to be specified. If a probationary teacher's contract is not renewed for a constitutionally impermissible cause, the teacher is awarded due process which specifies the right of adequate notice and an impartial hearing.

## Teachers with Tenure

The dismissal of a teacher with tenure must be performed in accordance with causes and procedures specified by state statutes. The statutory causes are broad in scope and vary from state to state. The most frequently cited causes include incompetency, immorality , neglect of duty, and insubordination. Incompetency issues often include professional relationships, teaching methods, grading, and classroom management. Immorality, the most frequently cited cause for dismissal, is broadly defined to include sexual, criminal, drug-related, and dishonest conduct. Neglect of duty can be defined as the intentional or unintentional failure to carry out assigned duties. In evaluating neglect of duty, the teacher's performance is measured against the performance of others to determine if the teacher's performance falls below what is

considered acceptable for other teachers in similar positions. Insubordination can include a wide range of behavior, and can be demonstrated by the willful disregard of duty, refusal to obey school regulations, failure to adhere to school policies and directives, improper use of corporal punishment, unwillingness to cooperate with superiors, and unauthorized absences, as well as other acts. Dismissal for insubordination usually requires evidence of a pattern of behavior unless the behavior is severe or substantial. With such acts, a single incident may be adequate to constitute insubordination. In addition to causes stated above, unprofessional conduct, unfitness to teach, conduct unbecoming, and "other good and just cause" cover a wide array of teacher behaviors that have been used for dismissal. Other causes for teacher dismissal may be unrelated to the teacher's performance. School districts are permitted to release teachers in the event of school district consolidations, declining enrollments, and financial exigency. These actions constitute a reduction in force (RIF) and must be compliant with statutory and contractual restrictions and adhere to district policy.

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Ficher, L., Schimmel, D., & Kelly, C. (1999). Teachers and the law (5th Ed.). White Plains, NY: Longman.

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Gullatt, D., & Tollett, J. (1997b). Educational law: A requisite course for preservice and inservice teacher education programs. Journal of Teacher Education, 48(2), 129-135.

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Kelly, E. (1998). Legal basics: A handbook for educators. Bloomington, IN: Phi Delta Kappa Educational Foundation.

McCarthy, M., Cambron-McCabe, N., & Thomas, S. (1998). Public school law: Teachers' and students' rights. Needham Heights, MA: Allyn and Bacon.

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# APPENDIX A

## RECOMMENDED RESOURCES

### Books

Beckham, J. (1996). Meeting legal challenges. The school leader's library: Leading for learning series. Lancaster, PA: Technomic Publishing Company.

Beckham, J. (1998). School officials and the courts: Update 1998. Arlington, Va: Educational Research Service.

Gorn, S. (1997). What do I do when...: The answer book on special education law. (2nd ed.) Horshm, PA: LRP Publication.

Harrison, M. (1997). Schoolhouse decisions of the United States Supreme Court. San Diego: Excellent Books.

Kopka, D. (1997). School violence: A reference handbook. Santa Barbara, Calif.:ABC-CLIO.

Rossow, L. (1999). The law of student expulsions and suspensions. (2nd ed.) Dayton, OH: Education Law Association.

Stuller, W. (1998). The conundrum of academic freedom. Alexandria, VA: National School Boards Association.

Taylor, B. (1996). Education and the law: A dictionary. Santa Barbara, Calif.: ABC-CLIO.

Trump, K. (1998). Practical school security: Basic guidelines for safe and secure schools. Thousand Oaks, CA: Corwin Press.

Turnbull, H. (1998). Free appropriate public education: The law and children with disabilities. (5th ed.) Denver, CO: Love Publishing Co.

U.S. Supreme Court education cases. (1997). Rosemont, Minn. Data Research Inc.

Yearbook of education law. (1999). Dayton, Ohio: Education Law Association.

Zirkel, P. (1988). A digest of Supreme Court decisions affecting education. Bloomington, Ind.: Phi Delta Kappa Educational Foundation.

## Serials

Cases in Point. Reston. Va.: National Association of Secondary School Principals.

Code of Federal Regulations. Education. Office of the Federal Register, National Archives and Records Services. Washington, DC: U.S. Government Printing Office.

Journal of Law and Education. Washington, DC: Jefferson Law Book Co.

Legal Memorandum. Reston, Va.: National Association of Secondary School Principals.

School Law Reporter. Dayton, Ohio: Education Law Assocation.

West's Education Law Reporter. St. Paul, Minn: West Publishing Co.

## ERIC Documents

Practical guide to church and state issues involving public education. (1997). ERIC ED 420-921.

Religious Expression in Public Schools: A Statement of Principles. (1998). Washington, DC: Department of Education. ERIC ED 416-591.

Sexual harassment. (1997). Paper presented at the Annual Women in Educational Leadership Conference. ERIC ED 412-621.

Student searches and the law: An administrator's guide to conducting legal searches on school campuses. (1995). National School Safety Center, Malibu, CA. ERIC ED 411600.

Student search and seizure: 1998 update. (1998). Paper presented at the Annual Meeting of the Education Law Association. ERIC ED 427-432.

Student Teachers and Legal Issues. (1998). Paper presented at the Annual Meeting of the Mid-South Educational Research Association. ERIC ED 428-039.

## Web-Based Resources

**Copyright**

The Copyright Website
http://www.benedict.com

Copyright Law in the Electronic Environment
http://www.utsystem.edu/ogc/intellectualproperty/faculty.htm

U.S. Copyright Office
http://lcweg.loc.gov/copyright.html

Web Law FAQ
http://www.patents.com/weblaw.sht

Welcome to fairuse.stanford.edu
http://fairuse.stanford.edu.html

Teacher Liability (Laboratory safety and field trips)

http://borg.lib.vt.edu/ejournals/JITE/v33n2/gregson.html
http://www.nsta.org/handbook/liability.htm

## Teacher Liability (Physical education)

http://www.sasked.gov.sk.ca/docs/physed/physed2030/tresources.html

## Teacher Liability (Sexual harassment)

http://www.mondaq.com/docs/noframes/1009158.html
http://www.anblaw.com/schooldistrict.htm
http://www.edweek.org/ew/vol-17/41scotus.h17
http://www.equalrights.org/SexHar/School/school.html
http://www.childabuse.org/

## Student Rights

http://www.aft.org/research/models/language/studentdiscipline.htm
http://www.utsystem.edu/OGC/SystemPolicies/security.htm
http://www.ccps.org/ccps/policies/studentrights.html
http://www.ncte.org/positions/right.html
http://www.aaas.org/
http://www.probe.org/docs/st-rts.html
http://www.aclj.org.html
http://www.yale.edu/ynhti/curriculum/units/1992/1/92.01.02.x.html
http://www.exmormon.org/larson1.htm
http://www.cgcs.org/newslett/educator/1998/october/article_11.htm

## Teacher Rights

http://www.aclunc.org/pressrel/19mar97p.html
http://www.ceai.org/rights.htm
http://www.thelowell.org/lowell/opinion/1998-99/dec4-firstamend.html
http://qrd.rdrop.com/qrd/www/orgs/glstn/teachers.legal.rights
http://www.edweek.org/ew/vol-18/06scotus.h18

## Teacher Termination

http://www.ed.gov/databases/ERIC_Digests/ed259448.html
http://www.ed.gov/databases/ERIC_Digests/ed259448.html
http://www.ed.gov/databases/ERIC_Digests/ed259448.html
http://www.emond-harnden.com/jul98/osstf.html
http://www.exmormon.org/larson1.htm
http://www.ed.gov/databases/ERIC_Digests/ed282352.html

## Search Engines/General Resources:

### All Law

http://www.alllaw.com

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American Law Sources on-Line
http://www.lawsource.com.also

Cornell University
http://wwwsupct.law.cornell.edu/supct

Education Law Association
http://www.educationlaw.org/.html

Education newsletter
http://www.exmormon.org/larson1.htm

Education Week
http://www.edweek.org/

Find Law Resources
http://www.findlaw.com.html

High School Magazine
http://nassp.org/publications/hsmag/index.html

Internet Legal Resource Guide
http://www.ilrg.com.html

LawCrawler
http://www.legalinformation.net/lawcrawl.html

LawOffice
http://wwwlawoffice.com.htm

Lawyers Weekly
http://www.lawyersweekly.com.html

Legal Resources on the Internet
http://www.cmblack-lawyer.com.html
http://www.lawsch.uga.edu/legalwww/html

Legal Resources on the Web
http://www.usc.edu/dept/law-lib/legal/topicslst.html

'Lectric Law Library
http://www.lectlaw.com.htm

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National Association of Elementary Principals
http://naesp.org

National Association of Secondary Principals
http://nassp.org

National Law Journal
http://www.lawnewsnetwork.com

National School Boards Association
http://wwwnsba.org.

QuickLaw America Inc.
http://www.currentlegal.com.htm

School Law Resources
http://www.dowling.edu/library/links/lawlink.htm

School safety and School Security
http://www.schoolsecurity.org/

Special Education Resources
http://www.hood.edu/seri/serihome.htm

West Legal Directory
http://www.wld.com

Title IX:

Title IX of the Education Amendments of 1972
http://www.usdoj.gov/crt/grants_statutes/titleix.txt

Title IX and Sexual Harrassment
http://www.edc.org/WomensEquity/pubs/digests/digest-title9-harass.html

# APPENDIX B
# LEXIS-NEXIS ACADEMIC UNIVERSE

Lexis-Nexis Academic Universe is a comprehensive, current, full-text databank of news, business, and legal information. Academic Universe can be accessed at any LOUIS academic library or from labs on campuses. Lexis-Nexis Academic Universe can be used to do legal research; however, this basic introduction to Lexis-Nexis is not meant to replace the professional legal advice of an attorney. In addition, the reference staff at your institution's library should be able to assist with more difficult research. Some basic information before beginning will make research in Lexis-Nexis Academic Universe go smoothly. First, the web-site contains helpful pages such as the "How Do I?" (FAQ page) and a help page which provide enough information to do basic legal research. From the home page, access the "help" page. On the help page, choose the "Conducting Research" option and then the "legal" option. Here you will find useful information on various topics uncommon to other types of research such as a glossary of legal terms and information on citations among other topics. In addition, each search page consists of the search form followed by a section of tips for effectively using those forms.

When you begin on the Lexis-Nexis Academic Universe web site you will have the choice of five "libraries" of information. Choose "Legal Research." This will bring you to "Basic Legal Research" Here you have many options for finding legal information. This introduction will address topics in the first three sections, "Secondary Literature," "Case Law," and "Codes & Regulations."

"Secondary Literature" refers to legal news and law reviews. Law reviews allow

us to understand the legal community's interpretation of the case law and are often valuable because they can contain the history of the issue and any decisions subsequent to the topic being researched. Legal news is important because it is more up to the minute than virtually all other forms of legal information. A great deal of case law is posted on the Internet almost immediately but interpretation provided by law reviews takes time to be published anywhere. Legal news pulls information from legal and other sources about very recent legal events. Searches in these two areas can be done by entering case names, case citations, topics, or keywords in the keyword area of the search screen. It is also possible to search a specific publication or date range

The "Case Law" section of Lexis-Nexis Academic Universe is very useful for the researcher unversed in legal research. The "Get a Case" section is most useful if the name of the case name or the citation is known as these are the only two search options. This form searches federal and state case law so it is unnecessary to know where the case originated. The "Federal Case Law" and "State Case Law" forms search by keyword, court, and date. In addition, case names, party names, and citations may be used. The search titled "Area of Law by Topic" allows searches in eleven specialized areas of law most only in federal case law. There is not an education law choice in the pull down menu under "topic" however, some of the topics may be of interest to educators.

The section titled "Codes & Regulations" contains searches for federal code, federal regulations, and state codes. EU law or European Union law and Tax law are also searchable under this field but are not applicable in this instant. The federal code

form allows searches in the U.S. code, federal rules, or the constitution. In this section, it is possible to search by rule, article, section, or code numbers, keywords, or titles. Searching in federal regulations allows retrieval from the Code of Federal Regulations, Federal Acquisition Regulations, and U.S. Attorney General Opinions. A search of state codes works in much the same way as for federal codes however, state code searches\ will be done in the materials relevant to that state.

## Using Lexis-Nexis Academic Universe

Information is organized hierarchically into categories called Search Forms. Categories include: top news; general news; company news; industry and market news; government and political news; legalnews; company financial information; country profiles; state profiles;biographical information; reference and directories; general medical and health topics; medical abstracts; accounting, auditing and tax; law reviews; federal case law; U.S. Code, Constitution, and court rules; state legal research.

## Search Steps

1. Select a Search Form category; click to view the Source.
2. Formulate a search query:

   Define the information need; phrase it as a question.

   Choose search words that are specific and concrete.

   Connect the search words.

   Consider appropriate date limitations.
3. Type in your search query. Required fields are noted with an asterisk. Use connectors and universal characters (see Search Tips).
4. Narrow or refine the search by adding additional terms in the box below topic.
5. Choose an appropriate Search Form and initiate the search.

## Search Tips

OR searches for alternative words

stock or share; regulate or deregulate

AND searches for all specified words in the same source

law and teachers

W/# searches for words close to each other

copyright w/5 media

W/S words must be in the same sentence

W/P words must be in the same paragraph

**Universal Characters**

! An exclamation mark is the symbol: employ! will retrieve employee, employer, etc.

* An asterisk substitutes for a single letter: wom*n (will retrieve woman or women)

## Basic Legal Research

| | |
|---|---|
| **Secondary Literature** | |
| Legal News | Articles from legal newspapers, magazines |
| Law Reviews | Articles from law reviews |
| **Case Law** | |
| Get a Case | Federal & state legal cases |
| Federal Case Law | Decisions from all federal court levels |
| State Case Law | State high court & appellate decisions |
| Area of Law by Topic | Cases on a variety of topics |
| **Codes & Regulations** | |
| Federal Code | Federal code, U.S. Constitution & courts |
| Federal Regulations | Agency opinions, attorney general opinions |
| State Codes | Statutory laws, court rules, attorney general opinions |

# APPENDIX C

## SEXUAL HARASSMENT POLICY: LINCOLN PARISH SCHOOLS

A.E. Phillips Crisis Plan

This emergency plan is established as an integral part of our management responsibility for emergencies. The further purpose of this plan is to provide recommended procedures for the protection of life, property, and operations in the event of an emergency.

**Student Supervison**

Students should never be left unsupervised. When students are on playground, teachers are to move about observing student behavior and monitoring for any unauthorized persons.

**Organization**

An emergency team has been established for A.E. Phillips. The director will assume charge and issue necessary directions. In the director's absence, the office coordinator or guidance counselor will assume charge during an emergency situation. All rooms are equipped with a telephone and computers with email capability.

**Fire Emergency Organization Plan**

Fire drills are conducted and documented monthly. Evacuation maps are posted in every classroom. Notify the nearest fire department in the event of a fire (9-911). Even during drills, teachers will check role in order to account for students. The last person to leave the room is to shut the door.

**Bomb Threat**

Bomb threats may be received by various means, but will usually be by telephone. In the event of a bomb threat, the following procedures are to be followed:

The person receiving the threat must attempt to keep the person calling in the threat on the phone as long as possible and immediately but quietly alert another person of the situation at hand.

The person taking the call should remain calm, be courteous, and listen to the caller. If possible, attempt to get answers for the following questions:

1. When will it go off?
2. Where is it located?
3. What kind of bomb is it?

Bomb Safety Precautions

1. Notify University Police at extension 4018.
2. Evacuate building.

Every person should check his/her assigned areas regularly for any unusual objects or for items out of place.

**Student Teasing, Bullying, and Harassment**

After a written complaint has been filed with the school administrator, the administrator shall conduct an investigation and take further action as deemed appropriate. Any threat or harassing comment or action will be taken seriously.

**Violent/Criminal Behavior**

If anyone observes a suspicious person on campus or witnesses a criminal act, immediately notify office personnel so that University Police may be notified. All visitors to the campus are required to stop by the school office before entering any classroom. All visitors without visitor badges are to be asked to stop by the office to obtain a visitor's badge.

**Gun or Knife Attack**

If a gun or knife is used to harm anyone at school, the following action will be taken:

- The director/designee will immediately go to the victim to apply emergency first aid.
- The director's designee will call 9-911 and 4018 (university police).
- The director/designee will attempt to maintain order and clear the area of everyone but necessary personnel.

**Medical Emergencies**

Upon receiving notification of a medical emergency, call the director/office coordinator and give the following information:

1. nature of the emergency.
2. identify person if possible and location.
3. specify if an ambulance is needed.

**Natural Disasters**

When an emergency tornado announcement is made, move students to posted designated area. After the disaster or threat of disaster passes, secure premises as required. If evacuation is necessary, persons should attempt to leave the building using the fire drill exit route. Provide/request medical assistance as necessary.

Safety Committee

Cathy Stockton  Gail Nelson
Sandra Degnan  Rosemary Reeves

Emergency Communication

cell phone  245-2639
director/office coordinator have 2-way radios

revised August 9, 1999

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## EXAMPLES OF SEXUAL HARASSMENT

**VERBAL:**

Referring to an adult as girl, hunk, baby or honey
Whistling at someone, making cat calls or kissing sounds
Turning work discussions to sexual topics
Making sexual comments about a person's body
Making sexual innuendos
Telling sexual jokes or stories
Asking about sexual fantasies, preferences or history
Asking questions about a person's social or sexual life
Repeatedly asking out a person who is not interested
Telling lies or spreading rumors about a person's sex life
Asking for sexual favors
Name calling of a sexual nature (hey baby, bitch, etc.)

**NON-VERBAL:**

Looking a person up and down (elevator eyes)
Staring at someone
Blocking a person's path
Standing too close
Preventing someone from leaving an area
Giving personal gifts
Having sexually suggestive materials at the workplace (posters, calendars, etc.)
Making facial expressions, winking, throwing kisses, licking lips
Making sexual gestures with hands or through body movements

**PHYSICAL:**

Touching a person's clothing, hair or body
Constantly hanging around a person
Hugging, patting, kissing or stroking
Touching or rubbing oneself sexually around another person
Standing close or brushing up against another person
Spiking (pulling down someone's pants)
Giving "wedgies" or "snuggies" (pulling underwear up between the buttocks)

These actions in and of themselves are not always considered sexual harassment. If these actions are unwelcome, AS DETERMINED BY THE RECIPIENT, that's the key test as to whether a given behavior constitutes sexual harassment!

When violations of the Lincoln Parish School Board Sexual Harassment policy have been validated, appropriate disciplinary actions such as reprimand, suspension, or termination proceedings shall be taken.